The Basel Action Network (BAN) Response to the Ministry of Environment and Forests Press Release (September 15) Regarding Shipbreaking in India

15 September 2005

The Basel Action Network finds the statement contained in the MOEF press release to be erroneous and prejudicial. Below we have annotated (in boxes) their press statement in order to correct the numerous false and misleading assertions. We believe that while honorable parties can disagree on policy, they should nevertheless base these policies on facts. In this case, the MOEF is presenting false statements.

PRESS RELEASE – Setpember 15, 2005

This refers to the news item appearing in some of the news papers of 14th September, 2005 in connection with the orders of the Hon. Supreme Court with respect to a petition filed concerning a ship named "Ricky" which arrived at the Alang ship breaking yard in Gujarat some times back for ship breaking. In this connection, the facts of the matter are summarized below for information.

Ship breaking is an activity being undertaken mainly at the Alang ship breaking yard in Gujarat. This ship breaking yard is one of the largest ship breaking yards in the region. Presently, there are 3 International Conventions which have guidelines on various aspects of ship breaking, namely, International Maritime Organisation, Basel Convention and International Labour Organisation. The guidelines formulated by these International Organizations in many respects are over lapping and also there is lack of consensus in these guidelines on the various aspects concerning this activity. Under the IMO guidelines, a ship which can propel itself cannot be termed as waste,

> In fact this is not true. The IMO Guidelines make *no* statement that a ship that can propel itself cannot be termed a waste.

whereas there is a view of some European countries and NGOs like Basel Action Newwork and Green Peace, which advocates that prior informed consent procedure

followed under the Basel Convention for trans-boundary movement of hazardous wastes must be applied to ships destined for breaking.

It is incorrect to assert that only some NGOs and some European countries agree this position. In fact this position was affirmed by a decision taken at the highest level (Conference of the Parties) of the Basel Convention Last October, at the Seventh Conference of the Parties. There the Parties clarified any remaining ambiguity in Decision II/26 as follows:

> *"**Noting** that a ship may become waste as defined in article 2 of the Basel Convention and that at the same time it may be defined as a ship under other international rules,*

The presence of asbestos and PCBs onboard the Ricky qualifies the waste ships as hazardous waste under the Convention. Indeed Decision VII/26 also reminds the Parties of this fact:

> *"**Recognizing** that many ships and other floating structures are known to contain hazardous materials and that such hazardous materials may become hazardous wastes as listed in the annexes to the Basel Convention,"*

Finally Decision VII/26:

> *"Reminds the Parties to fulfill their obligations under the Basel Convention where applicable, in particular their obligations with respect to prior informed consent, minimization of transboundary movements of hazardous wastes and the principles of environmentally sound management;"*

Decisions of the Parties are at the highest legal level, next to the text of the treaty itself. It is not acceptable that India simply ignores this decision simply because it disagrees. Nor is it acceptable for them to state that this is not the final view agreed to by over 160 countries that are Parties to the Basel Convention.

The present position in this respect is that a Joint Working Group of the 3 International organizations is working on developing guidelines which could be applicable to the ship breaking industry.

This is not precisely true either. What the Joint Working Group is tasked with doing is comparing regimes and discussing possible joint work. It has not mandate to develop any new guidelines.

In India the Hon. Supreme Court has given detailed guidelines for regulating ship breaking in the country. These guidelines include procedures to be followed before a ship can be taken up for breaking.

Yes and these guidelines of the Hon'ble Supreme Court of India order dated October 14, 2003 have been blatantly violated in the case of the "Ricky". The order states *(Ref: 70-2. (2) Ship Breaking)*:

- *"Before a ship arrives at port, it should have proper consent from the concerned authority or the State Maritime Board, stating that it does not contain any hazardous waste or radioactive substances. AERE should be consulted in the matter in appropriate cases."*
- *A complete inventory of hazardous waste on board of ship should be made mandatory for the ship owner. And no breaking permission should be granted without such an inventory. This inventory should also be submitted by the GMB to concerned SPCBs to ensure safe disposal of hazardous and toxics waste.*

The Gujarat Maritime Board in this context has also given detailed instructions for regulating ship breaking at Alang ship breaking yard. As regards the ship named "Ricky" which has arrived at Alang ship breaking yard, the Danish Minister had written to the Hon. Minister for Environment & Forests for sending back the ship as it carried hazardous wastes. To ascertain the position, the ship was jointly inspected by a Team comprising Gujarat Maritime Board, Central Pollution Control Board and Gujarat Pollution Control Board (GPCB) officials. As per the Report of the Team, the ship did not carry any hazardous wastes as cargo.

Yes, but the MOEF knows full well that Denmark was not referring to *cargo* but was rather referring to the ship itself as waste in accordance with the Decision VII/26 of the Basel Convention. It is disingenuous for the MOEW to play word games with the sovereign state of Denmark that called for a return of the vessel but has so far been refused by India.

In fact even if India were to have blocked the decision passed by a consensus of the Parties (which they did not) they must still honor the wishes of Denmark under the terms of the Basel Convention.. This is due to the fact that the Basel Convention defines hazardous waste in two ways. First by virtue of the Annexes found in the Convention and secondly by virtue of the fact that if any Party involved in a transboundary movement (exporter, transit state or importer) considers the shipment to be a hazardous waste by their own national law, then this also must be considered as hazardous wastes for the states concerned (export, import or transit).

Article 1.1.b states this definition as follows:

> *1. The following wastes that are subject to transboundary movement shall be "hazardous wastes" for the purposes of this Convention:*
>
> *(a) Wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III; and*
>
> *(b) Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit.*

As we can see above, due to the fact that Denmark considers the Riky to be a waste and a hazardous waste is sufficient legal basis for India to be obliged to consider it as such as well. They do not have any legal justification for ignoring another Basel party's law, Denmark's, in this regard.

If this were not the case, then any country could suddenly make a claim that they do not consider a waste to be a waste, leaving the other states concerned exposed and vulnerable to trade. Imagine for the sake of illustration, if Denmark were to declare for example that it did not consider dioxin in barrels to be a waste and chose to simply export such waste to India without controls whatsoever even if India declared it as such. This unilateralism is clearly what the authors of 1.1.b sought to prevent – that is, the Basel Convention is precautionary to avoid this type of victimization. Rather the Basel Convention is based on the principle of denying waste trade without *mutual consent*.

This is clearly the intent of Article 1.1.b. It is not possible for one country to consider wastes as non-wastes or hazardous wastes as non-hazardous wastes if one of the States Concerned (exporting, transit or importing state) considers it as a hazardous waste under their own law.

As such the shipment of the Riky from Denmark to India is clearly illegal traffic as defined in Article 9 of the Convention because among other things, it left Denmark without the proper notification. Article 9, states in part:

> *For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes:*
>
> *(a) without notification pursuant to the provisions of this Convention to all States concerned; or*

shall be deemed to be illegal traffic.

Denmark is thus correct in labelling the shipment to India illegal. The final paragraph of the article on illegal traffic states:

> *5. Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall co-operate with a view to achieving the objects of this Article.*

It is therefore absolutely clear that India must cooperate with Denmark, as a Party to the Basel Convention and prosecute this shipment as illegal traffic regardless of their political views regarding ships as waste and the shipping industry.

The stand of the country on this issue along with the facts of the matter were therefore intimated to the Danish Minister for Environment stating that ship cannot be classified as wastes within the scope of the Basel Convention and that strict compliance of the Supreme Court directions is being monitored in the country.

The Supreme Court decision does not refer to cargo. Indeed everyone involved in the legal issues surrounding shipbreaking has never been concerned about cargo. The question in this matter has always been about structural material of the vessel itself which due to the fact that it is to be diposed or recycled is defined by law as waste. The Supreme Court knows full well that the intent of its order is being undermined by this new definition of what they were concerned about.

Further, that the Team of officials have inspected the vessel and found no objectionable hazardous materials on the ship.

The lie is revealed by simply asking the question that is asked everyday regarding ships for scrap all over the world. Was the structure of the vessel tested for polychlorinated biphenyls (PCBs) and for asbestos content? If not, then the inspection was a fraud.

And that as per Indian laws and our position under the Basel Convention and the IMO, the ship had the requisite permission for beaching. No further reference from the Danish Minister for Environment in this connection has been received in the Ministry thereafter.

The notion that the Danes gave up the case summarily is misleading. Denmark sent not one but three Ministerial level letters to India, from Foreign Affairs and Environmental Ministers, begging for the return of the vessel and all such letters were rebuked by India in an illegal manner with respect to their Basel Convention obligations as explained above.

It is to also mention in this context that the above ship also had the cargo free certificate issued by the Customs Department, as the vessel arrived at Alang in ballast (empty).

This matter was also deliberated in the 10th meeting of the Supreme Court Monitoring Committee (SCMC) held during June 1-3, 2005 at Shillong, when the SCMC after considering all the aspects of the matter observed inter-alia that all the conditions laid down by the Supreme Court for ship breaking activities are required to be scrupulously followed.

Clearly the SCMC did not have all of the fact of the case before them to have arrived at this conclusion.

Therefore, it was decided that both Central Pollution Control Board and GPCB should depute their officers to be present on the spot while breaking of the ship initially for the first week, and thereafter, once in a week.

In the petition which was considered by the Hon. Supreme Court on 13th September, 2005, the Hon. Supreme Court has directed the "SCMC and the Joint Commissioner of Customs, Ahmedabad to look into it and file their response thereto within 2 weeks". It may also be mentioned in this context that the Hon'ble Supreme Court has not made any specific observations / directions in respect of the Hon'ble Minister for Environment & Forests, Shri A. Raja. The petition inter-alia seeks directions in respect of the ship named "Ricky" that it may be sent back to Denmark as it contains hazardous wastes. As mentioned earlier, there is still no consensus under the International Conventions on the guidelines governing the ship breaking.

This is misleading again in the extreme. There is only one Convention that governs the transboundary movement of ships for breaking and that is the Basel Convention and it did reach a consensus decision in VII/26.

As regards India, the said activity is being regulated strictly in consonance with the instructions of the Hon. Supreme Court.

Nothing could be further from the truth. It is not possible to create revisionist readings of the law and claim that anybody ever was concerned about cargo on a vessel arriving for breaking. The prior issue before the court and before every shipbreaking debate ever conducted has been about hazardous materials no board a ship defined as waste. Finally, regardless, India is obliged to respect the definitions as described by the exporting State in this case Denmark.

Therefore, whatever has appeared in the news papers in this context regarding alleged role of the Minister of Environment & Forests is false, misleading and motivated. The facts in the matter are placed together to clarify the position on this aspect.

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